

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 GREGORY J. SALUTE, State Bar No. 164015
Supervising Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-2520
Facsimile: (213) 897-2804
6
7 Attorneys for Complainant

8 **BEFORE THE**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 79/09-67

13 **Y S T UNOCAL, INC., DBA**
14 **Y S 76 AUTO CARE**
801 S. Hoover Street
Los Angeles, California 90005-1202
15 **SUNG BEA LEE, PRESIDENT**

A C C U S A T I O N
S M O G C H E C K

16 Automotive Repair Dealer Registration
No. ARD 182000
Smog Check Station License No. RC 182000

17 Respondent.

18
19 Sherry Mehl ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Chief of the Bureau of Automotive Repair ("Bureau"), Department of Consumer Affairs.

23 **Automotive Repair Dealer Registration**

24 2. On or about April 7, 1995, the Bureau issued Automotive Repair Dealer
25 Registration Number ARD 182000 ("registration") to Y S T Unocal, Inc. ("Respondent") doing
26 business as Y S 76 Auto Care with Sung Bea Lee as President. The registration will expire on
27 January 31, 2009, unless renewed.

28 ///

1 **Smog Check Station License**

2 3. On or about April 18, 1995, the Bureau issued Smog Check Station
3 License Number RC 182000 ("station license") to Respondent. The station license will expire on
4 January 31, 2009, unless renewed.

5 **STATUTORY PROVISIONS**

6 4. Section 9884.7 of the Business and Professions Code ("Code") states, in
7 pertinent part:

8 (a) The director, where the automotive repair dealer cannot show there was
9 a bona fide error, may refuse to validate, or may invalidate temporarily or
10 permanently, the registration of an automotive repair dealer for any of the
11 following acts or omissions related to the conduct of the business of the
automotive repair dealer, which are done by the automotive repair dealer or any
automotive technician, employee, partner, officer, or member of the automotive
repair dealer.

12 (1) Making or authorizing in any manner or by any means whatever any
13 statement written or oral which is untrue or misleading, and which is known, or
14 which by the exercise of reasonable care should be known, to be untrue or
misleading.

15 (4) Any other conduct which constitutes fraud.

16 (b) Except as provided in subdivision (c), if an automotive repair
17 dealer operates more than one place of business in this state, the director pursuant
18 to subdivision (a) shall only invalidate temporarily or permanently the registration
19 of the specific place of business which has violated any of the provisions of this
chapter. This violation, or action by the director, shall not affect in any manner
the right of the automotive repair dealer to operate his or her other places of
business.

20 (c) Notwithstanding subdivision (b), the director may invalidate
21 temporarily or permanently, the registration for all places of business operated in
22 this state by an automotive repair dealer upon a finding that the automotive repair
dealer has, or is, engaged in a course of repeated and willful violations of this
chapter, or regulations adopted pursuant to it.

23 5. Code section 9884.13 provides, in pertinent part, that the expiration of a
24 valid registration shall not deprive the director or chief of jurisdiction to proceed with a
25 disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a
26 registration temporarily or permanently.

27 6. Code section 477 provides, in pertinent part, that "Board" includes
28 "bureau," "commission," "committee," "department," "division," "examining committee,"

1 “program,” and “agency.” “License” includes certificate, registration or other means to engage
2 in a business or profession regulated by the Code.

3 7. Section 44002 of the Health & Safety Code provides, in pertinent part, that
4 the Director has all the powers and authority granted under the Automotive Repair Act for
5 enforcing the Motor Vehicle Inspection Program.

6 8. Section 44072.2 of the Health & Safety Code states, in pertinent part:

7 The director may suspend, revoke, or take other disciplinary action against
8 a license as provided in this article if the licensee, or any partner, officer, or
director thereof, does any of the following:

9 (a) Violates any section of this chapter [the Motor Vehicle Inspection
10 Program (Health and Safety Code, § 44000, et seq.)] and the regulations adopted
pursuant to it, which related to the licensed activities.

11 (c) Violates any of the regulations adopted by the director pursuant to this
12 chapter.

13 (d) Commits any act involving dishonesty, fraud, or deceit whereby
another is injured.

14 9. Section 44072.6 of the Health & Safety Code provides, in pertinent part,
15 that the expiration or suspension of a license by operation of law, or by order or decision of the
16 Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall
17 not deprive the Director of jurisdiction to proceed with disciplinary action.

18 10. Section 44072.8 of the Health & Safety Code states:

19 “When a license has been revoked or suspended following a hearing under this
20 article, any additional license issued under this chapter in the name of the licensee may be
21 likewise revoked or suspended by the director.”

22 **COST RECOVERY**

23 11. Code section 125.3 provides, in pertinent part, that a Board may request
24 the administrative law judge to direct a licensee found to have committed a violation or
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
26 and enforcement of the case.

27 ///

28 ///

1 **UNDERCOVER OPERATION - AUGUST 26, 2008**

2 12. On August 26, 2008, a Bureau undercover operator using the alias
3 Jim McCoy ("operator") drove a Bureau-documented 1995 Chrysler Sebring to Respondent for a
4 smog inspection. The vehicle could not pass a smog inspection because the vehicle's positive
5 crankcase ventilation ("PCV") system was missing. Tommy J. Lee , a licensed technician,
6 performed the smog inspection and issued electronic Certificate of Compliance No. NC985430,
7 certifying that he had tested and inspected the 1995 Chrysler Sebring and that the vehicle was in
8 compliance with applicable laws and regulations. In fact, the vehicle could not have passed the
9 visual portion of the smog inspection because the vehicle's PCV system was missing. The
10 Bureau issued a citation to Tommy J. Lee for performing an improper smog inspection.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Untrue or Misleading Statements)**

13 13. Respondent's registration is subject to disciplinary action pursuant to Code
14 section 9884.7, subdivision (a)(1), in that on or about August 26, 2008, Respondent made or
15 authorized statements which it knew, or in the exercise of reasonable care, it should have known
16 to be untrue or misleading by issuing electronic Certificate of Compliance No. NC985430 for the
17 1995 Chrysler Sebring, certifying that the vehicle was in compliance with applicable laws and
18 regulations. In fact, the vehicle could not have passed the visual portion of the smog inspection
19 because the vehicle's PCV system was missing.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Fraud)**

22 14. Respondent's registration is subject to disciplinary action pursuant to Code
23 section 9884.7, subdivision (a)(4), in that on or about August 26, 2008, it committed acts which
24 constitute fraud by issuing electronic Certificate of Compliance No. NC985430 for the 1995
25 Chrysler Sebring without performing a bona fide inspection of the emission control devices and
26 systems on the vehicle, thereby depriving the People of the State of California of the protection
27 afforded by the Motor Vehicle Inspection Program.

28 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

3
4
5
6

7
8
9

0
1

2
3
4

5
6
7

8

90

1
2
3
4

25
26
27
28

1 b. **Section 3340.35, subdivision (c):** Respondent issued electronic
2 Certificate of Compliance No. NC985430 for that vehicle even though the vehicle had not been
3 inspected in accordance with section 3340.42.

4 c. **Section 3340.42:** Respondent failed to conduct the required smog tests on
5 that vehicle in accordance with the Bureau's specifications.

6 **FIFTH CAUSE FOR DISCIPLINE**

7 **(Dishonesty, Fraud or Deceit)**

8 17. Respondent's station license is subject to disciplinary action pursuant to
9 Health & Safety Code section 44072.2, subdivision (d), in that on or about August 26, 2008,
10 Respondent committed dishonest, fraudulent or deceitful acts whereby another is injured by
11 issuing electronic Certificate of Compliance No. NC985430 for the 1995 Chrysler Sebring
12 without performing a bona fide inspection of the emission control devices and systems on the
13 vehicle, thereby depriving the People of the State of California of the protection afforded by the
14 Motor Vehicle Inspection Program.

15 **PRIOR CITATIONS**

16 18. To determine the degree of discipline, if any, to be imposed on
17 Respondents, Complainant alleges as follows:

18 a. On or about July 16, 1996, the Bureau issued Citation No. C96-0476
19 against Respondent's registration and station licenses for violations of Health & Safety Code
20 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
21 devices according to procedures prescribed by the department), and California Code of
22 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
23 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
24 Bureau undercover vehicle with a non functional exhaust gas recirculation system. The Bureau
25 assessed civil penalties totaling \$250 against Respondent for the violations. Respondent
26 complied with this citation on August 12, 1996.

27 b. On or about January 29, 2007, the Bureau issued Citation No. C07-0490
28 against Respondent's registration and station licenses for violations of Health & Safety Code

1 section 44012, subdivision (f) (failure to perform a visual/functional check of emission control
2 devices according to procedures prescribed by the department), and California Code of
3 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
4 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
5 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's
6 specifications. The Bureau assessed civil penalties totaling \$500 against Respondent for the
7 violations. Respondent complied with this citation on April 10, 2007.

8 c. On or about July 27, 2007, the Bureau issued Citation No.
9 C08-0068 against Respondent's registration and station licenses for violations of Health & Safety
10 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
11 control devices according to procedures prescribed by the department), and California Code of
12 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
13 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
14 Bureau undercover vehicle with a missing fuel evaporative system. The Bureau assessed civil
15 penalties totaling \$1,000 against Respondent for the violations. Respondent complied with this
16 citation on October 22, 2007.

17 d. On or about March 20, 2008, the Bureau issued Citation No.
18 C08-0820 against Respondent's registration and station licenses for violations of Health & Safety
19 Code section 44012, subdivision (f) (failure to perform a visual/functional check of emission
20 control devices according to procedures prescribed by the department), and California Code of
21 Regulations, title 16, section ("Regulation") 3340.35, subdivision (c) (issuing a certificate of
22 compliance to a vehicle that was improperly tested), for issuing a certificate of compliance to a
23 Bureau undercover vehicle with the ignition timing adjusted beyond the manufacturer's
24 specifications. The Bureau assessed civil penalties totaling \$2,000 against Respondent for the
25 violations. Respondent complied with this citation on May 1, 2008.

26 **OTHER MATTERS**

27 19. Pursuant to Code section 9884.7, subdivision (c), the Director may
28 invalidate temporarily or permanently, the registrations for all places of business operated in this

1 state by Y S T Unocal, Inc., doing business as Y S 76 Auto Care, upon a finding that it has, or is,
2 engaged in a course of repeated and willful violations of the laws and regulations pertaining to an
3 automotive repair dealer.

4 20. Pursuant to Health & Safety Code section 44072.8, if Smog Check Station
5 License Number RC 182000, issued to Y S T Unocal, Inc., doing business as Y S 76 Auto Care,
6 is revoked or suspended, any additional license issued under this chapter in the name of said
7 licensee may be likewise revoked or suspended by the director.

8 **PRAYER**

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

11 1. Temporarily or permanently invalidating Automotive Repair Dealer
12 Registration Number ARD 182000, issued to Y S T Unocal, Inc., doing business as Y S 76 Auto
13 Care;

14 2. Temporarily or permanently invalidating any other automotive repair
15 dealer registration issued to Y S T Unocal, Inc., doing business as Y S 76 Auto Care;

16 3. Revoking or suspending Smog Check Station License Number
17 RC 182000, issued to Y S T Unocal, Inc., doing business as Y S 76 Auto Care;

18 4. Revoking or suspending any additional license issued under Chapter 5 of
19 the Health & Safety Code in the name of Y S T Unocal, Inc., doing business as Y S 76 Auto
20 Care;

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

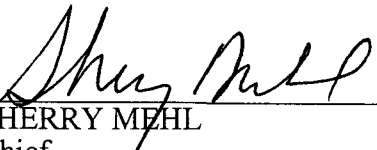
27 ///

28 ///

1 7. Ordering Y S T Unocal, Inc. to pay the Director of Consumer Affairs the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
3 125.3; and,

4 8. Taking such other and further action as deemed necessary and proper.

5
6 DATED: 1/27/09.

7
8 
9 SHERRY MEHL
10 Chief
11 Bureau of Automotive Repair
12 Department of Consumer Affairs
13 State of California
14 Complainant
15
16
17
18
19
20
21
22
23
24
25
26